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Supreme Court, U.S.
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No. 00-1223

In The

Supreme Court of the United States

*

United States of America

In re Leon Braun

Petitioner

v.

Seminole Tribe of Florida Inc., and Seminole Tribe of Florida

Respondent

*

PETITION FOR A WRIT OF MANDAMUS ON THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

*

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

*

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Dated: March 20, 2001

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1. QUESTIONS in the Petition for Mandamus.

1. Whether mandamus should issue to the United States Court of Appeals for the Eleventh Circuit compelling that court to reverse themselves on their decision barring the U.S. Government with Relator, Leon Braun , from bringing a qui tam action, under The False Claims Act, ("FCA"), 31 U.S.C. §§ 3729-30 et-seq, against the Defendants, Seminole Tribe of Florida and Seminole Tribe of Florida, Inc. as a result of the Indians asserting that the Federal Court lacks jurisdiction because of the Doctrine of Indian Sovereign immunity?

2. Does the U.S. Government abrogate the rights of the Seminole Tribe of Florida to invoke the purported doctrine of Sovereign Immunity when relating to violation of Federal Law pursuant to 25 CFR, Indians, Chapter 3, Subchapter II- § 81. Contracts and agreements with Indian tribes, which provides an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in a federal action brought against the Indian tribe?

3. Does the Seminole Tribe of Florida specifically abrogate its purported claim of Sovereign Immunity as related to violations of Federal law pursuant to its own Constitution of the Seminole Tribe of Florida, Ratified August 21, 1957 –*Article V, wherein The Seminoles Tribe agrees to abide by the United States Constitution and its Laws?*

4. *Can an Indian Tribe, (Seminole Tribe of Florida)* defraud the U.S. Government by taking money contrary to the provisions of the False Claims Act, 31 U.S.C. §§ 3729-30 et-seq, then assert absolute immunity from suit by invoking the purported doctrine of Tribal Immunity contrary to the provision of the U.S. Constitution. (Article 3 Clause 2) which states:

"the judicial Power shall extend to all Cases, in Law and Equity...-to Controversies to which the United States shall be a Party... "?

5. Was the lower courts' summary dismissal of the U.S. Government's complaint against the Seminole Tribe of Florida alleging violations of the False Claims Act, 31 U.S.C. §§ 3729-30 et seq, by invoking the Doctrine of Sovereign Immunity contrary to the provisions of the U.S. Constitution, Article 9 which states:

"No money . shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. "?

6.Did the Eleventh District Court commit "Plain Error" when stating (see Page 3 of Appendix, under Analysis)

"While the various circuits of the United States Court of Appeals have not yet reached the issue of tribal sovereign immunity when a private citizen has brought a qui tam action against an American Indian tribe under the False Claims Act ... "

not withstanding the qui tam decision *(United States of America, ex rel. Glenn A. Hall, v. Tribal Development Corporation, No. 93-3519. Decided on Rehearing March 9, 1995.)* which have held that the Doctrine of Tribal immunity does not bar such action?

7..Did the Eleventh District Court and the Appellate Court commit Plain Error when not recognizing that the U.S. Government was the Plaintiff in this action and therefore, improperly by the Doctrine of Tribal Immunity, summarily dismiss this action; thereby substantially and severely impairing the right of the U.S. Government to collect damages as a result

of the improper and unlawful conduct of the Seminole Tribe of Florida in violation of the *False Claims Act ,31 U.S.C. §§ 3729-30 et-seq?*

8. Whether the Court's decision to grant immunity related to unaccounted fund, contrary to reporting required by *25 CFR 450c et-seq,* is in the Indian population's best interest as that decision allows needed funds to be dissipated without accountability?

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Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(b) Representations to Court.

By presenting to the courts pleading, written motion, or other paper, an attorney.. is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the

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1.STATEMENT OF THE CASE

The Respondents' Brief in opposition to the U.S. A.'s Petition For a Writ of Mandamus takes the position that there is only one question involved.

"Whether the district court has subject matter jurisdiction to consider claim by an individual qui tam relator in the name of the United States against a federally recognized tribe under U.S.C. §476 and a federally chartered corporation under 25 U.S.C. § 477 for claims allegedly arising under the False Claims Act of 1986, 31 U.S.C. §§ 3729-30 et seq.

Defense then sates :

"counsel to the United States of America has set forth eight separate disjointed questions, each of which are embraced by the questions presented herein "[1]

The defense continues with their history of *(de nova)* rhetoric that has been shown to be irrelevant . [2]

We beg the court's indulgence because we feel obligated to again respond to show their irrelevance and why the eight questions posted by the Petition are relevant.

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[1] We assume defense is referring to their one question above.

[2] The repeated "de nova" reviews of inapplicable cases and statements that were shown and known to be in error could be considered a violation of "Federal Rules of Civil Procures, Rule 11.

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2. PROPER FORM.

Defense, on page 2 ,questions the use of the Mandamus as the proper form to be used rather than a petition for writ of certiorari. Defense states: *"Braun could have filed a petition for writ of certiorari in accordance with Rule 14 of the Rules of the Supreme Court..... "*

On page 10, defense states: *"the Appellate Court following a de nova review, was in no way ministerial but involved the court's exercise of proper judicial discretion,.."*
The "Petition For a Writ of Mandamus" repudiates these statements. It is contended the Appellate Courts' decision knowingly violated the Country's laws and Constitution. It follows, the Appellate Courts' decision should not have been discretionary and Mandamus is in order.
If a provider has new and material evidence or the prior determination is found to be inconsistent with law regulations or rulings, then there is a valid basis for reopening and the court has federal question and mandamus jurisdiction to review the refusal to reopen. (Memorial Hospital v. Sullivan, 779 F.Supp. 1410, 1412-13 (D.D.C.1991)).

Mandamus may be used for challenging the constitutionality or validity of statutes or official acts. (Wenke v. Hitchcock, 6 Cal.3d 746, 751, 100 Cal.Rptr. 290, 293 (1972)).

Questions 1, 2, 4, 5, 6, 7 of the petition address the issues of law impropriety and show why the Court has federal questions and mandamus is indicated.

3. DISCUSSION OF DEFENSES' BACKGROUND AND PROCEDURAL HISTORY.
Page 4, Note 3.
Defense notes that the Seminole Tribe of Florida, Inc. has its' own Board of Directors and its own budget. Defense references an unrefuted affidavit of Max E. Osceola.
This FCA case is filed against both the Seminole Tribe of Florida, and the Seminole Tribe of Florida, Inc.
The Seminole Tribe of Florida, Inc. is also required to file reports *(Title 25 & 450c, et seq).* Any, statement related to

funding is of no value without the documentation required to support it. There was no reason to refute the affidavit until the Court has been assigned jurisdiction. It also should be brought to the Court's attention that it is in the best interest of the Indian population that these reports be made. Question 8 of the Petition addresses that issue.

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Page 10 of Respondent's Brief.

Defense states *"Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." "Santa Clara Pueblo v. Martinez".*

Plaintiff points out, in fact, there is no immunity to any sovereign powers when the United States is the Plaintiff. (See Petition Question 1(Page i) and Discussion 1(Page 4.))

The Santa Clara case requires us to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

There is nothing in the Santa Clara case having to do with crimes against the government or violation of the constitution which are all part of the Governments' FCA case. Nor are any of the eight questions addressed.

The Santa Clara case is irrelevant.

****

Defense states , *"a suit against an Indian Tribe must be barred unless the tribe has clearly waived its immunity or Congress expressly abrogated that immunity by authorizing that suit".. See, Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751(1998).*

In the Kiowa case, *"The Tribe's industrial development commission agreed to buy from respondent certain stock issued*

by a third party, the then-chairman of its business committee signed a promissory note, in the Tribe's name, agreeing to pay respondent $285,000 plus interest".

The Indians did not make the promised Payments. Suit was instituted. It went through the courts to the Supreme Court. There was dissenting opinions, but the Court ruled in favor for the Tribe.

The Kiowa case did not involve the U.S. Government as the Plaintiff. The Kiowa case did not involve violations of the Constitution. The Kiowa case does not address the questions put forth in the Mandamus. **The Kiowa case isn't relevant.**

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Defendant cites, *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 509. "The issue presented in this case is whether a State that has not asserted jurisdiction over Indian lands under Public Law 280 may validly tax sales of goods to tribesmen and nontribal members occurring on land held in trust for a federally recognized Indian tribe. We conclude that under the doctrine of tribal sovereign immunity, the State may not tax such sales to Indians, but remains free to collect taxes on sales to non tribal members."*

This Oklahoma case is interesting because the Court ruled there is immunity when the Indians are selling to their tribal members **but no immunity, and must pay tax when selling to non tribal members.**

In essence **The Supreme Court ruled there is no blanket immunity even if Congress and the Indian Tribes are mute on the subject.**

However, **the Oklahoma case is also not relevant to the False Claims Act case because the U.S. Government is not a party; there is no direct violation of the Constitution; it does not address the questions put forth in the Mandamus.**

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Defendants then cite, *State of Florida v. Seminole Tribe of Florida, 181 F. 3d 1237, 1241, (11th Cir. 1999)*
According to the State's complaint, the Indians are operating illegal gambling in the State of Florida. The State cites IGRA and parts of applicable Title 25 and 18 U.S.C to make their point. The same 11th Circuit Board of Appeals ruled against Florida.
The Appellate Court and Defenses were made aware in the "Petition For Rehearing" that other Courts disagreed with the 11th Circuit.

U.S. 1st Circuit Court of Appeals No. 97-1644

Andrew Akins, et al v. Penobscot Nation, et al., "This case presents the first instance this court has been asked to address an important question in the allocation of sovereign powers between the Penobscot Nation and the State of Maine: the definition of "internal tribal matters." If the dispute here involves an "internal tribal matter" then the tribal courts have exclusive jurisdiction; if not, then claims have been stated within federal court jurisdiction and it was error to dismiss the action.."

And again in:

U.S. 8th Circuit Court of Appeals -U.S. v. Santee Sioux Tribe of Nebraska No. 97-1546 Submitted: November 19, 1997, Filed: January 29, 1998

***I.1** The Tribe argues that because of the Supreme Court's determination in Seminole Tribe that Congress was not empowered to authorize lawsuits by Indian tribes against states that fail to negotiate in good faith for a tribal-state compact, all provisions of the IGRA related to compacting are unconstitutional. We decline to address this argument given our conclusion that, under the IGRA, the State is not required to negotiate for gambling that is illegal under Nebraska law..*

***I.2** Because the video gambling engaged in by the Tribe is not permissible under Nebraska law, this activity is being conducted in violation of the IGRA, and the contention of the*

United States that it is entitled to an injunction from the District Court enjoining the further conduct of such activity by the Tribe is correct.

***I.3** The decision of the District Court is reversed and the case remanded for entry of an order enjoining the Tribe's operation of class III gaming devices and enforcing the Chairman's closure order.*

I.4** Because the IGRA is silent with respect to the authority to conduct litigation necessary to enforce the NIGC's closure orders in the event those orders are ignored or its assessments are left unpaid by Indian Tribes engaging in gaming activities in violation of the Act, **we must assume that Congress intended for the Attorney General to conduct this enforcement function on behalf of the agency.

And again in
U.S. v E.C. Investment,
U.S. 9th Circuit Court of Appeals , No. 94-50631 D.C. No CR-94-00361-RG-Argued and Submitted October 16, 1995- Pasadena, Cal, , Filed February 27, 1996

*Defendants' contention lacks merit because the plain language of sections 1166 and 1955 unambiguously establishes federal jurisdiction for the prosecution of large-scale gambling predicated on the use of slot machines prohibited by California law. **At the very least, a "person of ordinary intelligence" would have known that operating Class III games in Indian country without a Tribal-State compact violated IGRA.....** "*

However, the **Florida State v. The Seminole Tribe of Florida case is also not relevant to this False Claims Act case because the U.S. Government is not a party; there is no direct violation of the Constitution; it does not address the questions put forth in the Mandamus**.

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Defense next cited[2] Florida Paraplegic Assoc., v.. Miccosukee

Tribe of Indians, 166 f. 3d 1126, 113001131 (11th Cir. 1999). The Court must decide whether Title III of the Americans With Disabilities Act, 42 U.S.C. º 12181 et seq. ("Title III of the ADA" or "Title III") creates a private right of action against Indian tribes who allegedly have failed to comply with its requirements.

The "Petition For Rehearing", pointed out the questionable areas in that decision by the 11th Circuit. The "Petition also stated **the case is not relevant to the False Claims Act case because the U.S. Government is not a party and there is no violation of the Constitution. Also,**

The questions put forth in the Mandamus are not addressed by the Florida v. The Seminole Tribe case .

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On page 11 of the Respondents' Brief they refer to Indians as wards of the United States. This position is in conflict with the Defenses' immunity position. **It is incongruous to consider a ward to be immune to any regulation of its guardian**.

Oliphant v. Saquamish Indian Tribe, 35 U.S. 191 (1978) *stated that tribal sovereignty is limited in three ways: ---Justice Rehnquist -*

"Tribes are not permitted to exercise powers that are surrendered by treaty; and

Tribes are not permitted to exercise powers that are prohibited by federal statute; and

Tribes are not permitted to exercise powers that are inconsistent with their status of a domestic dependant nation."

****

On Page 12, Defense again cites State of Florida v. Seminole Tribe and Florida Paraplegic v. Miccossukee. The Defense keeps repeating non-applicable citations as if continued repetition will make them applicable. (ie. Kiowa, Oklahoma, Santa Clara, etc..)[2] They are not and can not be applicable because of the reasons stated and they do not address the eight

questions set forth in the Mandamus.

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Despite being informed of specifics to the contrary [2], defense on page 15 states *"The language of the FCA, as set forth in 31 U.S.C. §3729 et seq., does not disclose on its face, **or anywhere in legislative history**, and clear and unmistakable Congressional intent.... "*

Defense was enlightened in the "Mandamus" that other Courts have ruled on this issue. [2] We repeat.

In *Reich v. Mashantucket* the Court of Appeals, McLaughlin, Circuit Judge, held that: *(1) inherent tribal sovereign power did not preempt application of federal regulatory scheme that was silent on its application to Indians;* "

"United States Court of Appeals, Seventh Circuit., United States of America v. Tribal Development Corporation, No. 93-3519. Decided on Rehearing March 9, 1995.

Qui tam action was brought on behalf of United States..., the Court of Appeals,...., held that: (1) United States, rather than parties that brought action on its behalf, was plaintiff for standing purposes, and (2) United States suffered sufficient injury-in-fact for purposes of Article III standing. "

"In determining whether to dismiss for lack of standing qui tam action against defendants, appropriate inquiry was whether United States suffered injury-in-fact, not whether its representatives suffered injury. U.S.C.A. Const. Art. 3, §2, cl. 1; 25 U.S.C.A. §§81, 201, 264. "

****

Defense continues to second guess Congressional intent with statements like:[2]

"Specific Indian rights will not be deemed to have been abrogated or limited absent a "clear and plain Congressional intent... "

Braun, in past briefs, and most recently in the Mandamus, has

shown where our Constitution and written law make it plain that there can be no Indian Sovereignty when the United States is the Principal in a Court action. We repeat: *U.S. ex rel. McCarty v. Hollis, C.C.A.10 (Okla.) 1941, 120 F.2d 540). The jurisdiction of a United States court to entertain a suit by the United States for enforcement... is based on the provision that judicial power of United States shall extend to all controversies to which the United States is a party.*

And: United States v. Red Lake Band of Chippewa Indians, 827 F.2d 380, 382 (8th Cir. 1987) ("[It is an inherent implication of the superior power exercised by the United States over the Indian tribes that a tribe may not interpose its sovereign immunity against the United States."

****

4. Conclusion:

1.The issues and arguments presented by Defense have been addressed and shown to be irrelevant or in error.

2.Defense has not demonstrated, in any way, why the questions with answers presented in Mandamus are not relevant, or where they are in error, or why they shouldn't be governing in this case.

3.Congress did abrogate any Indian immunity in a Federal action brought against an Indian Tribe.(Title 25, Chapter 3, Subchapter II, §81)

4. The Constitution, Article 3, Clause 2, clearly states *"the judicial Power shall extend to all Cases, in Law and Equity...-to Controversies to which the United States shall be a Party..."*

It is respectfully requested this Petition for a Writ of Mandamus be granted so this case can proceed to satisfy facts, honesty, and justice under the law.
Submitted this day of March 20, 2001

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